

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14119, of June D. and Paul M. Levine, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3105.3) to use the first floor of the subject premises as a restaurant seating seventy-four persons in an HR/R-5-D District at premises 639 New York Avenue, N.W., (Square 450, Lot 804).

HEARING DATE: April 18, 1984
DECISION DATE: May 2, 1984

FINDINGS OF FACT:

1. The subject property is located on the north side of New York Avenue between 6th and 7th Streets and is known as premises 639 New York Avenue, N.W. It is zoned HR/R-5-D.

2. The subject site is rectangular in shape and has a frontage of twenty-four feet on New York Avenue and a depth of 115 feet.

3. The subject site is improved with a four-story brick structure which was constructed in the early 1900's.

4. The subject structure occupies nearly 100 percent of the lot, except for an air shaft located at the rear of the structure.

5. The subject site shares the northern frontage of New York Avenue between 6th and 7th Streets with the Acme Stove Co., Barker Lumber Co., B & M Automotive Parts, Midas Muffler, and vacant lot, a restaurant and the A.V. Italian restaurant and parking lot. Across New York Avenue to the south are the Columbia Electric Supply Co., Kim's Auto Body Shop, Hodges Carry-out, an auto brake shop and a used car sales lot. The remainder of Square 450, in which the subject site is located, is developed with various commercial uses including a real estate office, a hardware store, a furniture store, a liquor store, dress shop, Martin and Boyd Spring works, a barber shop, a beauty salon, a coin laundry machine company and a vacant warehouse for rent. The entire square is zoned HR/R-5-D. There are no residences located in the entire square.

6. New York Avenue is classified as a principal arterial street which provides continuity with the regional roadway network. Traffic movement is the primary service

function of a principal arterial, which carries the longest vehicular trips, has a minimum width of forty feet, serves as a major bus commercial vehicle route, and has an average daily traffic count in excess of 20,000 vehicles per day.

7. To the west of the subject square, the 7th Street right-of-way is under construction for the future Metro subway route.

8. The subject structure is immediately abutted to the east and north by commercially used buildings. There is no alley access to the rear of the property.

9. The subject structure was built in the early 1900's and was originally used as a storage warehouse for the Manhattan Storage and Transfer Company.

10. The contract-purchaser, hereinafter referred to as the applicant, testified that the subject premises have been used for warehouse purposes for the past four years. The applicant was unable to discover a certificate of occupancy evidencing the use of the subject premises as a warehouse but submitted three certificates of elevator inspection for 1982 and 1984 which were issued for the freight elevator in the subject premises indicating the use of the subject premises as a warehouse.

11. The only certificate of occupancy which the applicant was able to find, Certificate of Occupancy No. B-10016, dated October 2, 1976, permitted the use of the first floor of the subject premises for retail sales of light fixtures and the second through fourth floors for assembly and storage of light fixtures.

12. The square in which the subject premises is located was zoned C-3-B at the time of the adoption of the 1958 Zoning Regulations. The C-3-B District permitted medium density development including office, retail, housing and mixed uses.

13. On December 8, 1972, the Zoning Commission changed the zoning of the subject square to R-5-D. Subsequently, the Commission adopted the HR overlay zone.

14. The intent of the zoning amendments was to encourage high density residential and hotel development in accordance with the Downtown Urban Renewal Plan in proximity to the future Metro station at 7th and M Streets, N.W. and the Convention Center.

15. Many of the uses in existence at the time of the 1972 rezoning have remained in this square and continue to operate. There are no residential uses in the subject square.

16. The applicant proposes to establish a restaurant with a seating capacity of seventy-five on the first floor of the premises. The second floor of the subject premises would be used for staff lockers, freezers and storage.

17. The applicant proposes to operate the restaurant from 11:00 A.M. to 12 midnight, seven days a week. The applicant would employ approximately eight to ten staff.

18. The applicant expects that the restaurant will attract customers from the residential community north of the subject square, from employees and patrons of the existing commercial and office uses in the immediate area, from visitors to the Convention Center, and from travellers along New York Avenue.

19. The first floor of the subject premises consists of a large room which will be renovated for seating area, kitchens and toilet facilities. The existing hand-operated freight elevator and the stairway to the second floor will be retained to facilitate access to the second-story storage space.

20. The only exterior improvements to the subject premises will be a reconfiguration of the existing doorways and cosmetic treatment of the facade.

21. The applicant proposes to provide four doors at the front of the building one of which will provide direct access to the stairway to the second floor, and the other three providing an entrance, exit and emergency exit with panic bars for the restaurant.

22. The applicant testified that adequate parking to serve the patrons of the restaurant is available on New York Avenue and at existing commercial lots in the immediate area. In addition, the site is well-served by bus lines and is near the proposed Metro station at 7th and M Streets. The applicant is also exploring the possibility of purchasing the vacant lot to the west of the subject site for parking purposes at some future date.

23. The applicant is unable to qualify for a special exception to change a non-conforming use due to the absence of a valid certificate of occupancy demonstrating the use of the subject premises for warehouse purposes during the past four years. The applicant is, therefore, properly seeking a variance from the use provisions of the HR/R-5-D District to allow the proposed restaurant.

24. In order for the Board to approve a use variance, the applicant must demonstrate an extraordinary or exceptional situation or condition of the property itself creating an undue hardship upon the owner which precludes the use of

the property for purposes permitted in the zone district in which the property is located.

25. The applicant argued that an exceptional situation does exist based on the historical use of the subject premises as a warehouse, the zoning history of the area and the existing commercial uses which occupy the entire square.

26. In addition, the applicant contends that the existing structure cannot be converted to a residential use because no rear access or egress required by the D.C. Building Code for residential structures can be provided due to the absence of an alley at the rear of the site and to the existence of a structure which immediately abuts the subject premises to the rear.

27. The D.C. Building Code does not apply the same access/egress provisions for the proposed restaurant use as is required for a residential structure. The applicant testified that a door three feet in width is considered adequate to exit 300 persons from all points of public space within 110 feet of that door.

28. The applicant is proposing a maximum seating capacity for seventy-five people and no point of public space will be more than 110 feet from the doorways which are described in Finding of Fact No. 21.

29. The Office of Planning, by memorandum dated April 11, 1984, recommended that the requested variance be approved. It was the opinion of the Office of Planning that the property's physical improvement without a warehouse structure, its use history, the absence of a recorded certificate of occupancy, location surrounded by non-conforming commercial and light industrial use and problem with marketing the site for a permitted use addresses the tests established for use variance relief described in Paragraph 8207.11 and the Palmer vs. BZA Court of Appeals case. The Office of Planning was further of the opinion that the proposed use represents a reduction in intensity from its historic warehouse use and is a transitional or interim use of the site until market conditions in the area improve. Therefore, the use will not cause substantial detriment to the public good nor impair the intent, purpose and integrity of the Zoning Regulations. The Board concurs with the Office of Planning's recommendation.

30. Advisory Neighborhood Commission 2C made no recommendation on the subject application.

31. Bechir Kouchacji, the owner of a restaurant located in the same block as the subject premises, testified at the public hearing in support of the application. Mr. Kouchacji testified that the proposed use would help improve the appearance of the area and bring additional people into the

neighborhood. Mr. Kouchacji further testified that there were no existing problems with parking in the area.

32. There was no opposition to the application at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing of undue hardship upon the owner of the subject premises arising out of some unique or exceptional condition in the property so that the property cannot reasonably be used for the purposes for which it is zoned. The Board must further find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and map.

The Board concludes that the applicant has provided sufficient proof to establish an undue hardship inherent in the property. The property is affected by an extraordinary situation based on the existing physical improvements, its location in proximity to existing commercial and light manufacturing type uses, and its inability to be used for permitted purposes due to absence of a means for providing rear access/egress required to serve residential users. The absence of rear alley access and almost total lot occupancy preclude provision of on-site parking and servicing needs. The Board notes the lack of opposition to the application.

Although it is not dispositive of the application, the Board may also recognize an exceptional situation regarding the zoning history of the subject site and the lack of a valid certificate of occupancy establishing the use of the premises as a nonconforming use. The subject site was developed and used for a permitted use prior to the change in zoning which occurred in 1972. There is no evidence that the subject site has ever been used for any purpose permitted under the present zoning. Had the applicant been able to establish the existence of a legal non-conforming use, relief could have been sought as a special exception, rather than a use variance, which requires the applicant to carry a more difficult burden of proof.


The Board concludes that the applicant has met the burden of proof necessary for the granting of use variance. The Board further concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

Accordingly, it is ORDERED that the application for use of the premises as a restaurant is GRANTED.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, William F. McIntosh, Douglas J. Patton and Carrie L. Thornhill to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

JUL 24 1984

FINAL DATE OF ORDER: _____

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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